

entitled to be released on bail for reason of status that they were on bail during the trial. Thus, they are directed to be enlarged on bail by the trial Court on the same terms on which they were on bail, pending trial before the impugned judgment and order came to be passed. That status may remain till conclusion of the trial.

15. Office is directed to send back the original trial court record.

(2025) 5 ILRA 1733
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 14.05.2025

BEFORE

THE HON'BLE SAUMITRA DAYAL SINGH, J.
THE HON'BLE SANDEEP JAIN, J.

Criminal Appeal No. 11357 of 2024

Sukh Lal **...Appellant**
Versus
State of U.P. **...Opposite Party**

Counsel for the Appellant:
Sri A.K. Singh Solanki, Pashali Solanki

Counsel for the Opposite Party:
G.A.

Criminal Law-The Code of Criminal Procedure,1973-Section 374-Conviction on the basis of circumstantial evidence---

Prosecution story relies on the narration that the deceased was done to death on 10.01.2023--- Theory is unbelievable in face of clear medical opinion that the death was caused on 21.01.2023--- The evidence of last seen and the occurrence caused on 21.01.2023, is so far distant in time that it renders it wholly incredible and unreliable to the point of being extraneous to the essential facts that the prosecution set out to prove--- Occurrence/manner of death was never proven

on the strength of any circumstantial evidence. In fact, the homicidal nature of that occurrence itself was not established--- Prosecution story based solely on such circumstantial evidence is wholly disjointed, there is a complete break of the chain of evidence which remained unexplained by the prosecution --- merely because the occurrence may have been caused and merely because one accused may have been named for reason of motive disclosed, it may not be enough for the prosecution to claim that it had proof of the occurrence caused by such accused. The test of proof beyond reasonable doubt would remain to be satisfied by the prosecution by proving each circumstance in the chain of circumstances relied by it, motive being one but not the only material circumstance. Judgment of conviction set aside.

Appeal allowed. (E-15)

List of the cases referred:-

1. Sharad Birdhichand Sarda Vs St. of Mah., (1984) 4 SCC 116
2. Bodhraj alias Bodha & ors. Vs St. of J. & K., (2002) 8 SCC 45
3. St. of U.P. Vs Satish, (2005) 3 SCC 114
4. Ram Narain Singh Vs St. of Pun., (1975) 4 SCC 497
5. Mani Ram Vs St. of U.P., 1994 Supp (2) SCC 289
6. Shailendra Rajdev Pasvan Vs St. of Guj., (2020) 14 SCC 750
7. St. of M.P. Vs Paltan Mallah, (2005) 3 SCC 169
8. Sunil Rai Vs UT Chandigarh, (2011) 12 SCC 258
9. Rukia Begum Vs St. of Karn. (2011) 4 SCC 779

(Delivered by Hon'ble Saumitra Dayal
Singh, J.
&
Hon'ble Sandeep Jain, J.)

1. Heard Sri A.K. Singh Solanki, learned counsel for the appellant, Sri Vikas Goswami, learned A.G.A. for the State and perused the record.

2. At the outset, it has been stated by the learned counsel for the appellant that the present is a case of no evidence. The judgment and order of the learned court below is unsustainable as same has been passed solely on the strength of the confessional statement of the present appellant. Further, it has been stated, the appellant-Sukh Lal is the father of the deceased girl. He has remained confined for more than two years. He is suffering from cancer. Thus, it has been pressed that requirement of paper book may be dispensed and appeal itself be heard on its merit.

3. Learned A.G.A., with all fairness, does not oppose the prayer. Learned counsel for the parties have availed the opportunity to go through the lower court record. Thereafter, we have heard their submissions on the appeal, with the consent of learned counsel for the parties.

4. The present appeal arises from the judgment and orders dated 27.09.2024 and 30.09.2024 passed by Sri Narendra Nath Pandey, Additional Sessions Judge/ Fast Track Court- II, Court No.24, Shahjahanpur in Sessions Case No.762 of 2023 (State of U.P. Vs. Sukhlal), arising out of Case Crime No.47 of 2023, under Sections 302 and 201 I.P.C., Police Station-Sindhauli, District- Shahjahanpur, whereby the present appellant has been convicted under Section 302 and 201 I.P.C. He has been sentenced to undergo life imprisonment for the offence under Section 302 I.P.C and fine of Rs.50,000/-. In

default of payment of fine to further undergo additional imprisonment of two years. The appellant has been sentenced to undergo rigorous imprisonment of seven years and fine of Rs.10,000/- for offence under Section 201 I.P.C and in default of payment of fine to further undergo additional imprisonment of two months. All the sentences were directed to run concurrently.

5. The prosecution story emerged on the FIR registered on the Written Report described to have been submitted by the present appellant on 24.01.2023. Thus, the FIR was registered on 24.01.2023 at about 10:06 p.m. at Police Station- Sindhauli, District- Shahjahanpur in Case Crime No.47 of 2023 disclosing that the daughter of the appellant, namely, Archana aged about 18 years, who was a student of Class XII, went missing on 10.01.2023 after she left home for school. Despite many efforts, she could not be traced out. On 24.01.2023, at about 09:00 a.m., the dead body of Archana was discovered near the pond in another village, Deuria, Kalyanpur. Upon such discovery, the appellant expressed apprehension that Archana had been done to death.

6. Prior to the FIR being lodged, upon the recovery of the dead body of Archana, 'Panchayatnama' was prepared on 24.01.2023, between 01:09 PM and 02:15 PM. It is Ex.Ka-3 at the trial.

7. Briefly, it may be noted, according to 'Panch' witnesses, the death might have been caused due to drowning. On 24.01.2023 itself, at about 05:00-06:00 p.m., Dr. Mushtaq Ali, Dr. Vimlendra Kumar and Dr. Ritu Rastogi conducted the autopsy. In the post mortem report they noted the following ante-mortem injuries:

"Contusion 18x15 cm present mid of Head/Scalp. 5cm from right Ear Pinna."

8. As to time of death, it was recorded that the same might have taken place at "About Two-Three days ago Approximately". As to immediate cause of death, it was recorded, "Asphyxia due to Ante-mortem Drowning". The said autopsy report is Ex.Ka-4 at the trial.

9. During investigation, the Investigating Officer, Mahendra Singh (P.W.-8) appears to have doubted the correctness of the FIR narration. He recorded the statements of Rakesh Chandra (P.W.-1), Ganga Singh (P.W.-2), Avnish (P.W.-3) and Manjeet (P.W.-4) and concluded that the occurrence was caused by the appellant himself. Accordingly, charge-sheet was submitted against him.

10. Upon the case being committed for trial, the appellant was charged for offences under Sections 302 I.P.C. and 201 I.P.C.. At the trial, Rakesh Chandra (P.W.-1) was examined. He disclosed that the occurrence took place about 6-7 months earlier when the dead body of Archana was recovered from the village pond. He further disclosed that the deceased had formed a love relationship with Avnish (P.W.-3). That relationship existed for very long. Besides others, the present appellant and his family members including his wife, daughter-in-law and sons were aware of the same. Few days prior to the occurrence, the mother of Archana (deceased) had complained of the same to the family of Avnish (P.W.-3), but he did not pay any heed and continued his relationship with the deceased. He further stated that the appellant had confessed that he had caused the occurrence by hitting the deceased with a brick. That was recovered during investigation. During his cross-

examination, he admitted that the love relationship formed by the deceased with Avnish (P.W.-3) was a commonly known fact in the village. He had knowledge of physical intimacy between the said Avnish and the deceased but denied knowledge of any pressure on her part to solemnize marriage.

11. Next, Ganga Singh (P.W.-2) was examined. He has not proved the love relationship between the deceased and Avnish (P.W.-3). He also disclosed, the dead body of Archana was recovered along with her bicycle and school bag. During his cross-examination, he could not recall the date, day, month or year of the occurrence.

12. Next, Avnish (P.W.-3) was examined. He narrated, 10-12 days prior to the occurrence (recovery of the body), on 10.01.2023, at about 08:30-09:15 AM, he had received a phone call from Archana (the deceased), informing him that she was leaving for school on her bicycle. She asked him to meet her near the irrigation canal, outside the village. He met her there and spoke to her for some time in a sugarcane field. While the two were thus talking, the appellant reached that place and called out, angrily. At that, the said witness fled from the spot. He ran back to his home and switched off his phone. He did not share this information with anyone. Last, he stated, he left for Indore 6-7 days prior to the discovery of the dead body. He also narrated that he felt odd that the appellant was searching for his daughter though he always knew the deceased was along with him (appellant). However, he neither disclosed that he ever spoke to the deceased thereafter nor the CDR details of the mobile phone that may have been used by the deceased were obtained, during investigation.

13. During his cross-examination, Avnish (P.W.-3) admitted that he had formed love relationship with the deceased. It did not find the approval of the appellant, her brother and the villagers. He denied existence of intimate physical relationship with the deceased prior to the occurrence though the two remained in relationship for last two years. He also stated that deceased wanted to marry him, but she did not exercise any pressure on him to solemnize the same. Further, though she was engaged to someone else, he too was interested in marrying the deceased. As to the complaint made by the parents of the deceased to his family-with respect to the love relationship formed by the said witness with the deceased, he claimed no dispute arose between those parties on such complaint being made, though, it was an admitted fact that the deceased belonged to the caste "Dhobi", whereas the said witness belonged to another caste "Verma". He denied committing rape on the deceased or that upon deceased resisting his overtures, he had killed her. At the same time, he disclosed the mobile number used by the deceased with which the deceased called him twice, when he last met her.

14. He denied that on 10.01.2023, he, along with Deepu, Babloo, Ram Saran, and Archana, were seen together at about 10:00 a.m. in the agricultural field in Kalyanpur Diuriya, or that Farukkh or Saleem had seen them. On the contrary, he asserted that he was alone with the deceased at the time and place of last seen, on 10.01.2023. He denied having any role in manipulating the investigation to escape prosecution.

15. Next, Manjeet was examined as P.W.-4. He described that the dead body of the deceased was recovered from the

village pond. He stated, upon discovering the dead body, the appellant, his wife, and another persons were disturbed. He deposed that, appellant had seen Avnish and Archana in a sugarcane field. Also, even thereafter, Avnish and Archana used to meet frequently. Almost abruptly, thereafter, he stated-fearing loss of face and loss of reputation, the appellant committed the murder of his daughter-Archana. He also described in his statement that after the occurrence, the appellant could not see Avnish in the eye for very long. During his cross-examination, he specifically stated that he had not seen the appellant commit the murder of his daughter.

16. Thereafter, Head Constable Mitra Pal Singh (P.W.-5) was examined. He proved the registration of the FIR. S.I. Suresh Kumar was examined as P.W.-6. He proved the preparation of the '*Panchayatnama*'.

17. Thereafter, Dr. Mushtaq Ali was examined as P.W.-7. He proved the autopsy report. As to the cause of death, he opined that death had been caused by asphyxia due to drowning. He further opined that death occurred 2-3 days prior to the autopsy, surely proving that the death may have occurred not prior to 21.01.2023. Upon his cross-examination, he confirmed that the ante-mortem injuries noted on the head of the deceased did not involve a fracture injury but only a blood clot was found below the skull. He further clarified that the death may have occurred 48-72 hours, before the autopsy.

18. As to the ante-mortem and head injuries noted above, he specifically stated that, prima facie, it did not appear that these injuries had caused death. In fact, he opined that the death was caused due to

drowning, as water had filled up in the lungs of the deceased, leading to respiratory failure.

19. Last, the Investigating Officer Mahendra Singh was examined as P.W.-8. He proved the investigation.

20. Thereafter, the statement of the accused appellant was recorded under Section 313 Cr.P.C. Besides denying the adverse circumstances shown to him, he further stated, the occurrence had been caused by Avnish (P.W.-3).

21. By way of defence evidence, Shukh Lal was examined as D.W.-1 and his wife Satyawati was examined as D.W.-2, while Surjeet Kumar was examined as D.W.-3. Also, Saleem was examined as D.W.-4 and Farukkh was examined as D.W.-5.

22. By way of defence evidence led by D.W.-1, D.W.-2, and D.W.-3, the allegations levelled by the prosecution against the appellant were denied. It was further asserted, the occurrence may have been caused by Avnish (P.W.-3) and others. In that regard, it was further stated, Saleem and Farukkh had seen the deceased with Avnish (P.W.-3), Deepu, Babloo, and Ram Saran. On their part, Saleem and Farukkh, namely D.W.-4 and D.W.-5, attempted to establish that they had last seen the deceased near the village pond, sitting there with Avnish, Deepu, Babloo, Ram Saran, and Archana on 21.01.2023.

23. Upon hearing, the learned court below has convicted the present appellant and sentenced him to life.

24. Submission of learned counsel for the appellant is, there is no direct

evidence. The entire case is based on circumstantial evidence. In that, the FIR was lodged by the appellant 14 days after disappearance of the deceased-Archana, and that too after the discovery of her body in the village pond. Thus, evidence of last seen (on 10.01.2023) is too removed in time, from the occurrence, to inspire any confidence that the occurrence was caused by the appellant. Second, adverse circumstance cited by the prosecution was a brick claimed to have been recovered from the pointing out of the appellant. Neither the forensic report established the presence of human blood on that brick, nor did Dr. Mushtaq Ali (P.W.-7) opine that the death may have been caused by the ante-mortem injury described as assault caused with that brick. The fact that the deceased died of asphyxia due to drowning, was clearly proven. Third circumstance relied by the prosecution-of motive was neither proven nor it may ever be enough to infer that the appellant had committed the occurrence.

25. Here, it was unequivocally proven on the strength of prosecution evidence itself, led by Rakesh Chandra (P.W.-1), Ganga Singh (P.W.-2), and also Avnish (P.W.-3) (who had formed a love relationship with the deceased), that that relationship had existed for the past 2-3 years and that the two had been meeting frequently in the open and making phone calls to each other. These facts were known to the family of the deceased, including the present appellant and his other family members. No circumstance or fact was cited or proven to indicate that the appellant had strongly opposed this relationship between Avnish (P.W.-3) and the deceased. Only circumstance proven by the prosecution witnesses in that regard was that on 10.01.2023, while the deceased

and Avnish (P.W.-3) met in an agricultural field, the present appellant had spotted them and angrily inquired with whom the deceased was meeting, while during her school hours. At that the said Avnish (P.W.-3) fled from the spot and rushed to his house. He did not claim that any effort was made by the appellant to either assault him or to lodge any complaint against him, or against his family. In fact, he claimed that upon the arrival of the appellant, he fled to his home. He switched off his phone and stayed back for 5-6 days. Thereafter, he left for Indore. He also claimed, during that time, he used to switch on his phone for a while and then switch it off again. Although he claimed that he did not see the deceased after 10.01.2023, he never disclosed whether he spoke to her on his mobile phone after that date. Thus, the case of the prosecution was not proven beyond reasonable doubt. In fact, it was not proven at all.

26. Although conviction for a heinous offence can be based on circumstantial evidence alone, before such a conviction may ever arise, the chain of evidence must be complete and unbroken. Even if the issue of motive may not be overlooked, there is no close proximity in time between the occurrence, which according to Dr. Mushtaq Ali (P.W.-7) occurred around 21.01.2023, and the evidence of last seen led by the prosecution, of date 10.01.2023. For that long duration of 11 days, no evidence exists to show if the deceased was ever seen with the appellant. Merely because the appellant may have failed to lodge a prompt FIR or missing person report immediately upon the disappearance of the deceased on 10.01.2023, it does not necessarily constitute an admission of guilt or proof of the occurrence. In fact P.W.-4

appears to have proved that the deceased was alive for days after 10.01.2023. According to him, the deceased and Avnish (P.W.-3) continued to meet even, thereafter. That narration itself materially doubts the reliability of evidence of last seen. No other manner of the occurrence has been described/proven by the prosecution.

27. Further, the occurrence cannot be attributed to the present appellant based on confessional statement recorded during investigation. Such statements are generally inadmissible as substantive evidence.

28. On the other hand, learned A.G.A. would submit that the appellant had motive to cause the occurrence and he and his close family members were opposed to the love relationship formed by the deceased with Avnish (P.W.-3). Both existence of that love relationship and opposition of the family was proven by the prosecution. In any case, it is admitted to the defence. In that proven circumstance, it was wholly unnatural on the part of the appellant, to not report that the deceased had gone missing, on 10.01.2023. He made no effort whatsoever to search out the deceased (his daughter). He had not made any inquiries at the school that the deceased attended. Defence witnesses namely D.W.-1, D.W.-2 and D.W.-3 admitted existence of love relationship between the deceased and Avnish (P.W.-3). Being opposed to that and since the deceased did not refrain or withdraw from that relationship, she was done to death by the appellant.

29. Having heard learned counsel for the parties and having perused the record, in the first place, we may note that there is no direct evidence of the occurrence. As to the occurrence, it was

proven through medical evidence and it is prosecution's own case that the deceased died due to asphyxia caused by drowning. The solitary ante-mortem injury noted did not cause the occurrence. That fact was confirmed by the Dr. Mushtaq Ali (P.W.-7). Also, it may be noted, as to the time of death, the prosecution itself brought a case that the death had been caused 2-3 days prior to the autopsy. That was conducted at about 05.00-6.00 PM on 24.01.2023. Thus, according to the story narrated by the prosecution, death was not earlier than 21.01.2023. This fact was duly proven by Dr. Mushtaq Ali (P.W.-7) with reference to hour as well. In that, he disclosed that death may have been caused 48-72 hours prior to the autopsy. No other evidence exists with respect to the time of death.

30. In these facts proven by the prosecution, the further case that the appellant had caused the occurrence is to be tested. As noted above, no direct evidence exists. As to circumstantial evidence, the evidence of last seen led by the prosecution in the shape of Avnish (P.W.-3) is of 10.01.2023 in the morning hours. He narrated in detail that he had received a phone call from the deceased asking him to meet her near an irrigation canal, outside the village. Responding to that call, he had gone to meet the deceased. On way, he received another call from the deceased and met her in an agricultural field, between 08:30-09:15 a.m.

31. While the two were talking, according to Avnish (P.W.-3), the appellant reached that place and called out who was present. Assuming it to be true, Avnish (P.W.-3) suggested that the appellant could not immediately see who the deceased was speaking to. The fact that he claims that the appellant was looking angry, at that time,

also suggests that the appellant was unaware that the deceased was seeing Avnish as the appellant was well aware of the love relationship between them. At such occurrence, the said witness Avnish (P.W.-3) claims to have fled from the place without witnessing anything more. He ran back to his home and switched off his mobile phone. He stayed at his home and did not come out for the next few days during which time, he claimed that he used to switch on his phone for some time and switch it off again. He did not disclose if he ever spoke to the deceased after 10.01.2023, after fleeing from the agricultural field (where he last met the deceased 6-7 days), prior leaving for Indore to seek some work. Later, he learnt about the dead body of the deceased being recovered. On such knowledge gained, he claims to have made his disclosure to the police.

32. Assuming, all facts narrated by Avnish (P.W.-3) to be true and that such occurrence had actually taken place, it cannot be doubted that the deceased was last seen with the appellant (her father) about 11 days prior to the occurrence being caused. That evidence of last seen only proved a wholly natural occurrence of a father of a young girl expressing concern for his young daughter, who may not have gone to school but may have gone to meet her friend, on the false pretext of going to school. That may not lead to any proof of any criminal offence less so of heinous crime of murder, therefore caused by the father of the deceased i.e. the present appellant.

33. In any case, there is a wholly non- explained break in the prosecution story. The chain of circumstances that the prosecution set out to prove is broken and

disjointed at that point. While the Court may assume that having caught the deceased with Avnish (P.W.-3) at a time when the deceased was supposed to attend her school, he might have felt offended and scolded her and taken her back home or done any act of like nature, the prosecution failed to narrate what happened thereafter. The next link in the chain of evidence leading to the occurrence caused on 21.01.2023, do not exist. Prosecution has failed to prove that the appellant caused the occurrence in a fit of rage at that time i.e. on 10.01.2023.

34. Then, all prosecution witnesses Rakesh Chandra, Ganga Singh and Avnish did not lead any evidence to the effect that the appellant was wholly opposed to the love relationship formed by P.W.-3 with the deceased. On the contrary, the tenor of that evidence is not only the family of the deceased but the whole village was in the know of that love relationship having existed for the last 1-2 years and that they were reconciled to the fact that such relationship existed. Therefore, it is presumptuous and it would be wholly imaginary to conclude that in such circumstances proven by the prosecution, the appellant may have suffered a fit of rage or like emotion as may have provoked him or lent motive to him to cause heinous offence of murder of his own daughter. A father who has knowledge of love relationship formed by his daughter for last 1-2 years but had not raised any serious objection thereto over that long period of time, and who was also aware that his society was also in the knowledge of such relationship, may not act in that manner. In such circumstances, no motive to cause the occurrence may have arisen.

35. Thus, equally critically, in a prosecution story, resting on circumstantial

evidence, proximity of time between evidence of last seen and the time of occurrence/death, must be close. The rationale and basis is founded on the principle if there exists a long gap of time, other events or occurrences may intervene as may introduce a reasonable doubt that the occurrence may have been caused by another person or in another manner. On the contrary, if there is very less time gap between the evidence of last seen and the occurrence being caused, initial burden on the prosecution to establish that the occurrence was caused by the accused, may be found satisfied. The onus may shift on the defence to establish that the occurrence may have been caused in any other manner.

36. However, if the proximity of time, is unreasonably or unduly long in the normal/natural flow of human affairs and daily routines, the burden that lies on the prosecution to prove the occurrence beyond reasonable doubt may never be held discharged. Here, not only the day 10.01.2023 passed but 10-11 more intervening nights passed when the deceased Archana was alive and, therefore, may have gone on to perform her daily tasks and participate in normal engagements of life. She in normal course would have interacted with numerous persons. No revelation whatsoever was made by the prosecution to close out those possibilities.

37. At a criminal trial, arising on the strength of circumstantial evidence, close proximity of time between the evidence of last seen (of the accused and the victim) is a relevant circumstance. It is based on a common sense principle that any human being in the course of his normal and natural activities may engage with numerous persons and get involved

with or experience in different circumstances, for different purposes, over a duration of time. Those may lead to varied possibilities and consequences. Therefore, unless a close proximity of time exists between the evidence of last seen and the occurrence suffered by a victim, the Courts may not be able to readily conclude that the occurrence was caused by the accused who may have been last seen with the victim, often the deceased. Since, in such cases, the victim is not available. They having died or being otherwise not traced or recovered, the defence may be severely prejudiced/handicapped if it is burdened to establish innocence, by first explaining to the Court the subsequent occurrences and transactions that the victim/deceased, may have participated in or may have experienced long after such victim/deceased was last seen with the accused. That may amount to casting a reverse burden on the defence - to prove its innocence. It may be a highly improbable, if not impossible test to satisfy. The element of improbability or impossibility may depend on the facts of the individual cases. At the same time, the Courts may remain vigilant to not allow the prosecution to claim that it has discharged its burden to prove a vital circumstance that the accused had caused the occurrence by merely proving that they were last seen with the victim/deceased, if that evidence of last seen and the occurrence are separated, by a long gap of time.

38. In **Sharad Birdhichand Sarada vs State of Maharashtra, (1984) 4 SCC 116**, in the context of trials based on evidence of last seen, it was observed as below:

“159. It will be seen that this Court while taking into account the absence of explanation or a false

explanation did hold that it will amount to be an additional link to complete the chain but these observations must be read in the light of what this Court said earlier viz. before a false explanation can be used as additional link, the following essential conditions must be satisfied:

(1) various links in the chain of evidence led by the prosecution have been satisfactorily proved,

(2) the said circumstance points to the guilt of the accused with reasonable definiteness, and

(3) the circumstance is in proximity to the time and situation.”

39. Again, in **Bodhraj alias Bodha & Ors. vs State of Jammu & Kashmir, (2002) 8 SCC 45**, in that context, it was observed as below:

“31. The last-seen theory comes into play where the time-gap between the point of time when the accused and the deceased were last seen alive and when the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible. It would be difficult in some cases to positively establish that the deceased was last seen with the accused when there is a long gap and possibility of other persons coming in between exists. In the absence of any other positive evidence to conclude that the accused and the deceased were last seen together, it would be hazardous to come to a conclusion of guilt in those cases. In this case there is positive evidence that the deceased, A-1 and A-2 were seen together by witnesses i.e. PWs 14, 15 and 18; in addition to the evidence of PWs 1 and 2.”

40. Then, in **State of U.P. vs Satish, (2005) 3 SCC 114**, it was further elaborated as below:

“22. The last-seen theory comes into play where the time-gap between the point of time when the accused and the deceased were last seen alive and when the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible. It would be difficult in some cases to positively establish that the deceased was last seen with the accused when there is a long gap and possibility of other persons coming in between exists. In the absence of any other positive evidence to conclude that the accused and the deceased were last seen together, it would be hazardous to come to a conclusion of guilt in those cases. In this case there is positive evidence that the deceased and the accused were seen together by witnesses PWs 3 and 5, in addition to the evidence of PW 2.”

41. To begin with, it was not the prosecution story that the appellant confined the deceased for ten days and thereafter committed her murder. On the contrary, though not specifically asserted, the prosecution story relies on the narration that the deceased was done to death on 10.01.2023. As noted above, that theory is unbelievable in face of clear medical opinion that the death was caused on 21.01.2023.

42. Thus, the proximity of time does not exist. In fact, the evidence of last seen and the occurrence caused on 21.01.2023, is so far distant in time that it renders it wholly incredible and unreliable to the point of being extraneous to the essential facts that the prosecution set out to prove.

43. As to the cause of death, the prosecution story is equally doubtful. By recovery of a brick, the prosecution sought to prove the death occurred as a result of the injury caused with such brick. The prosecution never narrated and it never proved that the occurrence was caused in any another manner. Contrary to the prosecution assertion, the medical opinion brought by the prosecution itself established that the occurrence was not caused by the single blow suffered on her head/skull and that death was suffered by the deceased by asphyxia caused by ante-mortem drowning. That occurrence/manner of death was never proven on the strength of any circumstantial evidence. In fact, the homicidal nature of that occurrence itself was not established. What may have been and how such death may have been caused, is not for the Court to explore at this juncture, in such facts.

44. Suffice to note that the burden that lay on the prosecution to establish that occurrence was caused by the appellant, remained intact. We have also gone through the report of the Forensic Science Laboratory dated 18.04.2023 (Ex.Ka-11). It discloses that the samples of vaginal smear and also the brick (recovered by the prosecution), were sent for testing. Neither the vaginal smear could establish any occurrence of rape etc., nor any blood was found on the brick.

45. Thus, the prosecution story based solely on such circumstantial evidence is wholly disjointed. The only circumstance that was proven was of the appellant being last seen with the deceased on 10.01.2023. As noted above, that occurrence was wholly natural. In the further circumstances proven by the prosecution that death was caused on

21.01.2023, there is a complete break of the chain of evidence between 10.01.2023 to 21.01.2023. It remained unexplained by the prosecution.

46. In cases of direct evidence, some difference of time when the occurrence may be proven to have been caused and as may be indicated on the strength of medical opinion, may not be vital. At the same time, where there exists long difference of time, the issue may require careful examination. A difference of few hours in the time of death opined in the medical opinion and as proven through ocular evidence may not offer much difficulty to Courts. However, where there is vast difference in the time of death as opined in the medical opinion and where it may appear clear that the death was caused much later or earlier than proved through ocular evidence, careful examination may be called for. At the same time, a careful scrutiny of the prosecution evidence would be required, in criminal trials based on circumstantial evidence, i.e. evidence of last seen.

47. In **Ram Narain Singh Vs. State of Punjab, (1975) 4 SCC 497**, it was observed as below:

"14. Where the evidence of the witnesses for the prosecution is totally inconsistent with the medical evidence or the evidence of the ballistic expert, this is a most fundamental defect in the prosecution case and unless reasonably explained it is sufficient to discredit the entire case...."

48. Similar view was expressed in **Mani Ram Vs. State of U.P., 1994 Supp (2) SCC 289**. There it was observed as below:

"9. It is well settled by long series of decisions of this Court that where

the direct evidence is not supported by the expert evidence then the evidence is wanting in the most material part of the prosecution case and, therefore, it would be difficult to convict the accused on the basis of such evidence. If the evidence of the prosecution witnesses is totally inconsistent with the medical evidence this is a most fundamental defect in the prosecution case and unless this inconsistency is reasonably explained it is sufficient not only to discredit the evidence but the entire case. ..."

49. In **Shailendra Rajdev Pasvan Vs. State of Gujarat, (2020) 14 SCC 750**, it has been observed as below:

"16. In the case at hand, evidence of PW 28 and PW 29, who were crucial to the case of prosecution to establish that the deceased was last seen with appellant-Accused 1, is riddled with unexplained contradictions and thus were rightly disbelieved by the trial court. The High Court committed an error of law in placing reliance upon the evidence of the aforesaid two witnesses. The High Court also failed to take into account the time gap between the point when the appellant-Accused 1 and the deceased were seen together and when the death is alleged to have occurred. According to the prosecution evidence, the two were seen together on 4-2-2001 at about 10.30 a.m. The dead body was recovered on 13-2-2001. Post-mortem was conducted on 14-2-2001. Although the possible time of death is not indicated in the post-mortem report but the doctor who carried out the post-mortem opined in the statement that the time of death can be estimated to be 36 to 48 hours before the post mortem. This clearly goes to show that there was a huge time gap between the point when the accused and the deceased

were last seen together and the time of death. This crucial fact has been miserably overlooked by the High Court. Apart from extra-judicial confession by appellant-Accused 1, no direct evidence was adduced by the prosecution to establish involvement of the accused in the alleged crime. Entire case of the prosecution was based on circumstantial evidence and theory of last seen together. The extra-judicial confession of Appellant 1 before the complainant and other relatives and recovery of the dead body were linked together by the prosecution to form a chain.

17. It is well settled by now that in a case based on circumstantial evidence the courts ought to have a conscientious approach and conviction ought to be recorded only in case all the links of the chain are complete pointing to the guilt of the accused. Each link unless connected together to form a chain may suggest suspicion but the same in itself cannot take place of proof and will not be sufficient to convict the accused."

(emphasis supplied)

50. As to the manner of the occurrence, the prosecution story as brought, was not proven. As to motive, that was also not established as the prosecution witnesses themselves narrated that the love relationship formed by the deceased Archana was well known and more than that, it was a well accepted fact both in the village and also with the family of the deceased.

51. Though in cases of direct evidence, it may not be primary for the prosecution to establish motive, that issue may remain more relevant at a criminal trial based on circumstantial evidence. Yet, existence of motive alone may not be

enough to establish that therefore the occurrence was caused by an accused. Simply put, in given facts, more than one person may have a motive to cause an occurrence to the victim and each such motive may be equally strong, yet independent to the other. Therefore, merely because the occurrence may have been caused and merely because one accused may have been named for reason of motive disclosed, it may not be enough for the prosecution to claim that it had proof of the occurrence caused by such accused. The test of proof beyond reasonable doubt would remain to be satisfied by the prosecution by proving each circumstance in the chain of circumstances relied by it, motive being one but not the only material circumstance.

52. In **State of M.P. Vs. Paltan Mallah, (2005) 3 SCC 169**, it was observed as below:

"9. ... Motive by itself is not sufficient to prove the guilt of the accused. ..."

53. Then in **Sunil Rai Vs. UT Chandigarh, (2011) 12 SCC 258**, it was observed as below:

"31. In any event, motive alone can hardly be a ground for conviction."

54. Also, in **Rukia Begum Vs. State of Karnataka (2011) 4 SCC 779**, it was observed as below:

"12. In our opinion motive alone, in the absence of any other circumstantial evidence would not be sufficient to sustain the conviction of these two appellants."

55. We are constrained to observe that learned court below has completely erred in overlooking such vital facts. Its finding recorded in the order of conviction perhaps are persuaded by presumptions and conjunctures but are not based on credible evidence led at the trial. Such a finding recorded by the learned court below may remain to be categorized as perverse and wholly unsustainable in the eyes of law.

56. Consequently, the appeal succeeds and is allowed.

57. The judgment and order dated 30.09.2024 passed by the Additional Sessions Judge/ Fast Track Court- II, Court No.24, Shahjahanpur in Sessions Case No.762 of 2023 (State of U.P. Vs. Sukhlal), arising out of Case Crime No.47 of 2023, under Sections 302 and 201 I.P.C., Police Station- Sindhauli, District- Shahjahanpur, is hereby **set aside**.

58. The appellant is acquitted of the charges for lack of evidence led by the prosecution. Since the appellant-Sukh Lal is in jail. He be released forthwith subject to the condition that he is not wanted in any other case and subject to compliance of Section 437A Cr.P.C.

59. Let the trial court record along with a copy of this order be transmitted to the court concerned through Registrar (Compliance) forthwith and a copy of this order may also be sent to the Jail authorities concerned.

(2025) 5 ILRA 1745
REVISIONAL JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 09.05.2025

BEFORE

THE HON'BLE SUBHASH VIDYARTHI, J.

Criminal Revision No. 478 of 2025

And

Criminal Revision No. 479 of 2025

Praveen Pratap Singh & Anr....Revisionists
Versus

C.B.I.

...Opposite Party

Counsel for the Revisionists:

Purnendu Chakravarty, Anuj Taandon

Counsel for the Opposite Party:

Anurag Kumar Singh

Criminal Law — Indian Penal Code, 1860 - Sections 120-B & 420 — Prevention of Corruption Act, 1988, Sections 13(1)(d), 13(2) — Discharge — Scope — Subletting of Government contract by public sector company through pre-tender tie-up — Allegation of conspiracy causing loss to public exchequer — Plea that no person cheated and offence compoundable under Section 320 Cr.P.C. — Held, cheating of Government constitutes offence under Section 420 IPC as 'St.' falls within definition of 'person' under Section 11 IPC — Charge not speculative merely because exact loss not quantified — Offences under Sections 120-B IPC and 13(1)(d), 13(2) PC Act non-compoundable — No ground for discharge — Revisions dismissed. (Paras 27, 28, 32, 37, 39 and 41)

HELD:

The second submission of the learned counsel for the revisionists is the amount of losses has not been quantified and the charge is merely speculative. When it is apparent from the material available on record that the Government had awarded the contract to NPCC for Rs.14,60,62,604/-, NPCC sublet the contract to UCC for Rs.13.82 crores and UCC further sublet the contract to Sat Sai Earth Works Rs.7.16 crores i.e. almost half the amount of contract value of NPCC and the contract has been awarded without following the usual process of inviting tenders so as to ensure availability of best rates, prima facie a case of causing wrongful loss to the Public Exchequer is